

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

ALLEN D. DANIEL,

Plaintiff,

v.

Case Number 06-14387-BC
Honorable Thomas L. Ludington

JENNIFER GRANHOLM, *et al.*,

Defendants.

_____ /

**ORDER DENYING DEFENDANT'S MOTIONS FOR RECONSIDERATION
AND FOR RELIEF FROM JUDGMENT AND DENYING
HIS APPLICATION TO PROCEED *IN FORMA PAUPERIS* ON APPEAL**

In an order of December 22, 2006, the Court dismissed Plaintiff Allen Daniel's case without prejudice. On January 5, 2007, Plaintiff made several additional filings, which the Court has construed as a motion for reconsideration, a motion for relief from judgment, a notice of appeal, and an application to proceed *in forma pauperis* on appeal.

Regarding his motion for reconsideration, Plaintiff's repetition of his earlier assertions has not demonstrated a palpable defect by which the Court has been misled. *See* E.D. Mich. LR 7.1(g)(3). Nor has he shown that any correction would result in a different disposition, particularly given that the case was dismissed without prejudice. *See id.* Regarding his motion for relief from judgment, which the Court construes as filed under Federal Rule of Civil Procedure 60, no judgment has issued, because the case was dismissed without prejudice. Accordingly, any such relief is not warranted.

Regarding Plaintiff's motion to proceed *in forma pauperis* on appeal, an appeal may be taken *in forma pauperis* if the appeal is taken in "good faith." 28 U.S.C. § 1915(a). "Good faith" requires a showing that the issues are arguable on the merits and are, therefore, not frivolous; it does not

require a showing of probable success. *Harkins v. Roberts*, 935 F. Supp. 871, 873 (S.D. Miss. 1996) (quoting *Howard v. King*, 707 F.2d 215, 219-20 (5th Cir. 1983)). “If the district court can discern the existence of any nonfrivolous issue on appeal, the movant’s petition to appeal *in forma pauperis* must be granted.” *Harkins*, 935 F. Supp. at 873. Here, the Court cannot discern a nonfrivolous issue for an appeal from a ruling based on Plaintiff’s failure to comply with court rules or on his filing an insufficient application to proceed *in forma pauperis*. Nothing in this Court’s order forecloses Plaintiff from refiling his case and submitting a complete application to proceed *in forma pauperis* in his new case.

Accordingly, it is **ORDERED** that Plaintiff’s motion for reconsideration [dkt #9] is **DENIED**.

It is further **ORDERED** that Plaintiff’s motion for relief from judgment [dkt #10] is **DENIED**.

It is further **ORDERED** that Plaintiff’s application for leave to proceed *in forma pauperis* on appeal [dkt ##13, 14] is **DENIED**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: January 17, 2007

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on January 17, 2007.

s/Tracy A. Jacobs
TRACY A. JACOBS